THE HON'BLE MR JUSTICE L. NARASIMHA REDDY

Writ Petition No.35392 of 1997

Dated 04-04-2007

Between:

M/s XL Telecom Ltd.,

…Petitioner

And

Government of India, Ministry of Communications,
New Delhi and another

…Respondents

THE HON'BLE MR JUSTICE L. NARASIMHA REDDY

Writ Petition No.35392 of 1997

ORDER:

The Department of Telecommunications issued a tender notice dated 29-12-1995, inviting tenders for procuring 1,03,900 units of

Solar Power Generating Systems (SPGS), along with Sealed Maintenance Free Valve Regulated Lead Acid Batteries (VRLA).

A sum of Rs.20 lakhs is required to be furnished as security, by each tenderer. The tender involved two patterns, *viz*., outright purchase of the unit, or taking them on lease. Petitioner submitted its tender, quoting a sum of Rs.13,900/- per SPGS, and Rs.7,300/- for each VRLA battery. It also quoted a sum of Rs.67/-, as rental, for each set of thousand units, per quarter, apart from 0.5% as management fee. The tenders were opened on 03-04-1996. The petitioner was awarded contract for supply of 13,000 SPGS units, at a cost of Rs.19,080/- per unit.

So far as the offer for supply of units on lease is concerned, the department made a counter offer at Rs.62.60 ps., as against the offer of the petitioner, at Rs.67/-. While this process was going on, the petitioner was required to extend the validity of the tender,

as well as the bank guarantee. The petitioner, however, did not accede to that request. Alleging that the petitioner had resiled from its offer and violated the conditions of the tender,

the department enforced the bank guarantee, through their letter dated 18-12-1997. The same is challenged in this writ petition.

It is urged that the question of enforcing the bank guarantee would arise, if only the offer made by the petitioner was accepted, and thereafter the petitioner resiled from it. It is also contented that, by the time the respondents have decided to award contract of supply of the units by lease, the validity of the bid and bank guarantee had expired.

On behalf of the respondents, a counter affidavit is filed, raising an objection, as to the very maintainability of the writ petition. Reference is made to Clause 20 of the Instructions to Bidders, which is part of the bid document; and it is urged that,

if the petitioner feels aggrieved by the action of the respondents, the only course open to it, is, to seek arbitration. An attempt is made to justify the decision, on merits also.

Heard Sri S. Ravi, learned counsel for the petitioner, and Sri R.S.Murthy, learned counsel for the respondents.

Though several contentions are urged, at length, this Court does not feel it necessary, to deal with the same, elaborately. It is not in dispute that Clause 20 of the bid document provides for arbitration, in the event of any dispute, or difference, among the parties. The clause is couched in very wide terms. Time and again, the Supreme Court held that, wherever there exists arbitration clause, the Courts must be slow in examining the matter, in proceedings initiated under Article 226 of the Constitution of India. Further, disputed questions of fact need to be decided before any relief can be granted to the petitioner.

For the foregoing reasons, the writ petition is disposed of, leaving it open to the petitioner to avail the remedy of Arbitration, as provided for, under Clause 20 of the Bid Document. Inasmuch as the writ petition was pending, almost for a decade; before this Court, it is directed that the respondents cannot be mulcted with the liability of payment of interest, in the event of any award being made in favour of the petitioner, for the period during which, the writ petition is pending.

There shall be no order as to costs.

L. NARASIMHA REDDY, J

Dt.04-04-2007.

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